

MINUTES  
COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California

January 27, 2000

9:30 A.M. - PUBLIC SESSION

Present:       Chairperson Annette Porini  
                  Representative of the Director of the Department of Finance  
                  Vice Chair William Sherwood  
                  Representative of the State Treasurer  
                  Member Millicent Gomes  
                  Representative of the Director of the Office of Planning and Research  
                  Member Loren Suter  
                  Representative of the State Controller  
                  Member Albert Beltrami  
                  Public Member

Absent:        Member Joann Steinmeier  
                  Representative of School Boards

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS  
11126 and 17526.**

**A.       PENDING LITIGATION**

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

Item 14        *County of San Bernardino v. State of California, et al.*, Case  
                  Number SCV52190, in the Superior Court of the State of  
                  California, County of Los Angeles.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

## **REPORT FROM CLOSED EXECUTIVE SESSION**

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126 to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon pending litigation listed in the published notice and agenda.

### **ELECTION OF OFFICERS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, SECTION 1181.4, SUBSECTION (c).**

#### **Item 1            Chairperson and Vice Chairperson**

Paula Higashi, Executive Director, noted that state law requires the Commission members to elect a chairperson and vice-chairperson. The Commission's regulations specify that members are eligible to be officers, that the election occur at the January meeting, and the executive director is authorized to conduct the election. The regulations do not specify a procedure for the election. Under Roberts Rules of Order, elections can be conducted by nomination or motion and second.

Member Gomes moved to elect B. Timothy Gage, Director of Finance, as Chair. With a second by Member Sherwood, the motion passed unanimously.

Chairperson Porini nominated State Treasurer Philip Angelides as Vice-Chairperson. Member Angelides was elected unanimously.

### **APPROVAL OF MINUTES**

- Item 2            November 30, 1999**
- Item 3            December 1, 1999**
- Item 4            December 22, 1999**

Member Beltrami moved to adopt the minutes of November 30, December 1, and December 22, 1999. With a second by Member Gomes, and an abstention by Member Suter, the minutes were adopted unanimously.

### **PROPOSED CONSENT CALENDAR**

With a motion by Member Sherwood and a second by Member Gomes, the following consent calendar was adopted unanimously:

#### **A.        ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES**

- Item 10        *Annual Parent Notification-Staff Development* – CSM 97-TC-24  
San Diego Unified School District, Claimant  
Education Code Section 48980  
Statutes of 1997, Chapter 929**

Ms. Higashi noted that this new mandate is amended into the existing parameters and guidelines on *Annual Parent Notification*.

#### **B.        ADOPTION OF PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES**

- Item 11        *Collective Bargaining/Collective Bargaining Agreement Disclosure* –  
98-4425-PGA-12  
Request to Amend the Parameters and Guidelines**

Santa Ana Unified School District and Stockton Unified School District  
Statutes of 1975, Chapter 961  
Statutes of 1991, Chapter 1213

Ms. Higashi noted that the proposed amendment is to increase the hourly cap for professional and consultant services to \$135 per hour.

C. ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

Item 12 SIDS Training – Remand – CSM 4412  
County of Los Angeles, Claimant  
Health and Safety Code Section 1797.192  
Statutes of 1989, Chapter 1111  
(Renumbered 1797.193 by Statutes of 1990, Chapter 216)

Ms. Higashi noted that the proposed statewide cost estimate is for \$1.4 million for costs incurred from fiscal year 1990-91 through the budget year.

**HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7**

A. TEST CLAIMS

[The Department of Finance requested the Commission skip over Item 5. Ms. Higashi swore in all potential witnesses.]

Item 6 *Standardized Emergency Management Systems (SEMS)* – CSM 4506  
County of San Bernardino, Claimant  
Government Code Section 8607  
CCR, Title 19, Sections 2400-2450  
Statutes of 1992, Chapter 1069

Pat Hart Jorgensen, the Commission’s Chief Counsel, presented this item. She noted that the two issues before the Commission are: 1) do the test claim legislation and implementing regulations constitute a new program or higher level of service, and 2) if so, is it a state mandate?

As to the first issue, the Office of Emergency Services (OES) contends that the legislation merely ratifies and clarifies prior law and therefore does not create a new program or higher level of service. Conversely, Commission staff recommends the Commission find that a new program or higher level of service exists.

Regarding the second issue, the claimant contends that the legislation requires local agencies to implement and use SEMS in order to continue its eligibility for specified response-related personnel costs. OES argues that the receipt of these funds has always been discretionary. They submit that locals are not now, and never were, required to implement SEMS, and that the funding is an incentive to adopt SEMS rather than a mandate.

The Department of Finance (DOF) submits that failing to adopt SEMS and thereby losing funds does not constitute a state mandate on locals. Citing to Attorney General opinions, the DOF maintains that reliance on Sacramento II factors is unfounded since it dealt with a federal and not a state mandate, and that the state’s statutory scheme precludes a finding that a “coercion proviso” should be considered when determining whether a state mandate exists.

Staff concluded that the Commission has two options to determine this issue: 1) finding SEMS is state mandated because the legislation is coercive, or 2) deny the test claim because the Commission's statutory scheme precludes applying the Sacramento II "carrot and stick" factors to state law. Ms. Jorgensen explained that Government Code section 17513, defining costs mandated by the federal government, includes a compulsion proviso, whereas section 17514, defining costs mandated by the state, does not.

Staff had no recommendation as to which alternative the Commission should adopt, though they did recommend dividing the hearing between the two issues.

Parties were represented as follows: Marcia Faulkner, for San Bernardino County; Jim Cunningham, interested party, for San Diego Unified School District; Jim Apps, for the Department of Finance; Bob McKechnie, for the Governor's Office of Emergency Services; Paul Minney, for Girard and Vinson on behalf of Mandated Cost Systems, Incorporated; Jeff Graybill, for the Attorney General's Office; and, Allan Burdick, for the California State Association of Counties (sworn separately).

Ms. Faulkner agreed with staff's recommendation on the first issue that a new program or higher level of service exists. Mr. Cunningham and Mr. Minney withheld comments until discussion of the second issue.

Mr. McKechnie argued that costs associated with the emergency management training and practice of management principles are already built into any credible training and management program and always have been. He submitted that SEMS only presents a framework within which to construct this training and its application, and that its use would likely show a reduction in costs due to greater efficiency.

Member Beltrami asked why SEMS was passed, since Mr. McKechnie's testimony made it sound as if it did not do anything that was not done before. Mr. McKechnie agreed, and explained that, after the Oakland fires, the Legislature felt it was necessary to get everybody on common ground and to employ the preexisting principles that have been used by most emergency service organizations throughout the state.

Ms. Faulkner argued that SEMS added many new features, such as training for elected officials, department heads and fiscal personnel. Before SEMS, she submitted that her County did not have to go through all of these training programs and involve people beyond who are the normal response personnel.

Member Sherwood asked if OES' comment would be that that was or should have been taking place before SEMS. Mr. McKechnie agreed. He added that the regulations are not very compulsive, and allow the locals discretion as to which particular training they give their employees. SEMS sets up a curriculum, and asks locals to use the curriculum and training, but does not mandate which particular people shall be trained.

Member Beltrami questioned Ms. Faulkner why fiscal personnel would have to be at the emergency center during an earthquake. Ms. Faulkner clarified that it was the incident command system, and explained that state OES and the training manuals and regulations require all of these parties be present at the county OES during an emergency.

Mr. McKechnie argued that it was a self-imposed, not state-imposed requirement. Member Sherwood asked if the instruction from the state level was a requirement or recommendation. Ms. Faulkner replied that she had been advised it was due to SEMS and the state requirement. In

response to Member Sherwood, Ms. Faulkner said that San Bernardino did conduct training and carried out certain provisions prior to SEMS, but none of it was required by the state. Mr. McKechnie continued to maintain that it is voluntary.

Mr. Minney thought perhaps locals could be exposed to negligence in the event of a disaster if they had not complied with the programs. Mr. McKechnie replied that the Emergency Services Act contains a broad immunity, which would probably preclude that kind of liability.

Member Gomes moved to find that no new program or higher level of service exists. Chairperson Porini seconded the motion. [No action was taken at that time.]

Member Beltrami was still unclear as to how much greater the requirements are now than before SEMS. He asked if, for instance, the requirement for fiscal personnel to be in the emergency operating center during a disaster was a requirement of the county, city, or under SEMS. Ms. Faulkner's understanding was that it was required under SEMS. Member Beltrami asked if there were additional reporting requirements under SEMS. Ms. Faulkner replied that there definitely are. She mentioned the after-action-incident-report and another periodic report.

Mr. McKechnie agreed with Member Beltrami that the goal of this legislation was that every local government participate.

Member Gomes commented to OES that this program truly is discretionary in nature, and that locals already participate in emergency service. She thought the documents indicated that it is and always has been discretionary for them to participate in SEMS. Mr. McKechnie replied that it is not discretionary, but there has always been a statute on the books requiring local jurisdictions to comply with the State Emergency Plan. That plan incorporated all of the elements of SEMS, though perhaps under different names, but from a practical standpoint, they were always there.

Ms. Faulkner argued that the State Emergency Plan is directed to state personnel, and does not pertain to counties, schools, or cities. Mr. McKechnie disagreed and submitted that the state emergency plan shall be in effect in each political jurisdiction of the state.

Member Beltrami questioned why this legislation was adopted, if everything was really in place before. Mr. McKechnie replied that there was a political reason, due to the Oakland fire, and legislators probably wanted to bring the issue to the forefront. The existing requirement was more effectively presented by bringing it together under the name of SEMS.

Member Gomes noted that the OES bulletin gives locals the right to "access state funding." Member Beltrami agreed that funding is not guaranteed, but submitted that there is an assumption at the local level that they will get something back. Member Gomes replied that that assumption was there before and after SEMS.

Ms. Faulkner argued that, in Government Code 8550, the state acknowledges its responsibility in emergency situations and that the section does not mandate locals to do anything. Mr. McKechnie replied that, read in context, the locals do have responsibility.

Ms. Faulkner agreed with the Chair that locals do have some responsibility to protect their citizens, but submitted that SEMS adds responsibilities. She did not believe that SEMS is voluntary. Mr. Minney noted that the discussion was moving toward the second issue.

Member Gomes repeated her motion that SEMS is not a new program or higher level of service. The motion failed 2-3, with Members Gomes and Porini voting “Aye” and Members Beltrami, Sherwood, and Suter voting “No.” Chairperson Porini called for discussion of the second issue.

Ms. Faulkner disagreed with the state agency examples of other programs with fiscal incentives. She submitted that the Legislature intended this to be a punishment or penalty rather than an inducement. Ms. Faulkner explained that there are ongoing requirements in SEMS, but locals do not get a reward until a disaster occurs. She added that the Legislature cannot override Article XIII B of the Constitution by offering an incentive that is really a punishment.

Mr. Cunningham did not want the Commission to make a decision in this test claim that would effect the *School Site Councils* test claim, without having the benefit of all of the arguments on that issue. He disagreed with the DOF’s analysis of Government Code sections 17513 and 17514, dealing with costs mandated by the federal government and by the state, respectively. Mr. Cunningham argued that the fact that there is no exclusion from state mandates for an optional program is instructive. He submitted that the Commission should, or must, look at the *Hayes* and *Sacramento II* analyses to determine whether the program is truly mandated. Mr. Cunningham added that a mandate can exist if the financial incentive or penalty is so substantial that it raises the program to the level of a mandate, where there is no true option other than to adopt the program simply due to the amount of money.

Member Sherwood agreed that “substantial” is the key matter in this or any case. He was not sure if he agreed with Mr. Cunningham’s argument, however, because SEMS seemed to him to be a voluntary situation. The state has been appropriating funds for years and locals were not and are not required to participate in this program. Member Sherwood explained that, even if he were to agree that some increased services exist, he had a problem seeing SEMS as a mandatory requirement and a substantial situation.

Mr. Cunningham requested the Commission apply the same test for state mandates as for federal, and to consider all of the factors in *Sacramento II* and *Hayes*, such as the level of funding that would be lost for not participating, or the intent to coerce.

Member Beltrami asked Mr. Cunningham to respond to the DOF’s argument that, if the Commission ignores 17514, an act of the Legislature, that they are, in effect, legislating. Mr. Cunningham replied that the Commission should not ignore it, rather, they should apply it in a more common sense fashion. Noting the exclusion from federal mandates if a program is optional at the state level in 17514, he argued that the absence of that exclusion in 17513 is the key issue.

Mr. McKechnie argued that the incentive does not create a mandate. He submitted that adoption of the “carrot-and-stick” test would obliterate the Constitutional and statutory distinctions between federal and state mandates and would infringe on the authority of the Legislature.

Mr. Graybill concurred with Mr. Cunningham’s request to consider this issue together with the *School Site Councils* claim. By encouraging the Commission to follow the constitutional meaning rather than statutory, he submitted that Option 1 appears to lead the Commission to a possible conflict with Article III, section 3.5 of the California Constitution, which mandates that no administrative agency may refuse to carry out a mandate of the Legislature on the grounds that it believes the mandate is unconstitutional. He further argued that in Option 2, if the Commission follows the statute and finds no mandate, it could create problems down the road.

Rather than choosing one of these options, Mr. Graybill suggested the Commission consider rejecting the claim and allowing claimants to go to court.

Mr. Minney concurred with Option 1 of staff's analysis and sided with Mr. Cunningham that the Commission should consider adopting the *Hayes* and *Sacramento II* analyses. He was concerned that, if these analyses were not applied to these types of situations, it would create a loophole for the Legislature by allowing them to claim that programs are voluntary but coerce locals into adopting them.

Mr. Burdick argued that SEMS is too big of a "stick" not to comply with its requirements. He submitted that the Commission should look to what the Constitution requires them to do in terms of determining whether a mandate exists. He also questioned the relationship between today's decision or discussion and the *School Site Councils* claim.

Member Sherwood noted that Mr. Burdick had, in the past, argued "voluntary versus mandatory" and now was using the "carrot-and-stick" approach. Member Sherwood was still looking at the program as voluntary. He submitted that Mr. Burdick's issue was much broader and was not sure how members had viewed it in the past.

Mr. Burdick stated that staff's use of "carrot-and-stick" in its analysis was appropriate. He thought this was the first time it has been dealt with as it relates to a particular local program. Mr. Burdick submitted that the central issue was whether the *Sacramento II* analysis applied to the state government as well as the federal government. Member Sherwood replied that the issue may have been raised by staff, but that does not mean the Commission feels it is an issue relative to this situation; the Commission may instead focus on "voluntary versus mandatory."

Ms. Higashi noted that the "carrot-and-stick" analysis was done most recently on various parts of the *Special Education* claim, which was relative to federal mandates.

Ms. Faulkner argued that SEMS is not an incentive because locals get nothing additional for efforts of complying with the program. Member Beltrami said that it is an added hurdle to apply for funds.

Member Gomes and Chairperson Porini agreed with Member Sherwood that the Commission should discuss "voluntary" versus "mandate." The Chair added that "access" does not mean you get the funds. She saw the program as voluntary and not a penalty.

Member Beltrami submitted that in some counties, SEMS has added costs and created another layer of government. They may be OES guidelines, but they seem to have an impact at the local level. He did not agree with the argument that locals do not have to report under SEMS.

Mr. Burdick submitted that the issue was not whether it is good or bad legislation, rather that SEMS took the discretion away from local government and held a stick over locals' heads that constitutes a mandate.

Member Sherwood said that, if the Commission decided SEMS is voluntary, they would not get as far as considering the "carrot-and-stick" argument. Member Gomes was concerned that, if the Commission found SEMS as voluntary and took a step beyond that and found costs mandated by the state, it would open the door to a lot of other issues that could come before the Commission on that particular point.

Member Beltrami did not see SEMS as a "carrot-and-stick" approach, because locals are not getting the carrots. Instead, they will not get what they had been eligible to apply for before

SEMS. Mr. Burdick submitted that it was an attempt by the Legislature to get around the mandate process.

Member Beltrami asked if the members were willing to continue the discussion to the next meeting, when Member Steinmeier would be present. The Chair called for a motion.

Ms. Faulkner supported a motion for continuance. Member Gomes moved that there are no costs by the state. Member Sherwood seconded the motion.

Ms. Jorgensen inquired whether Chairperson Porini wanted the issues to be consolidated into one issue—whether SEMS constituted a new program or higher level of service which imposed costs mandated by the state. Alternatively, the Commission could make an underlying assumption that SEMS constituted a new program or higher level of service in order to get to the issue as to whether SEMS imposed costs mandated by the state. Chairperson Porini expressed her thoughts that bifurcating the issues increased the complexity of the claim and directed staff to revise its analysis.

[A recess was taken from 11:21 a.m. to 11:37 a.m.]

Item 5            *School Crimes Reporting II – 97-TC-03*  
San Diego Unified School District, Claimant  
Penal Code Sections 628.2 and 628.6  
Title 5, CCR, Sections 700-704  
Statutes of 1996, Chapter 410

Jim Apps noted the Department of Finance’s (DOF) letter to the Commission in which they took issue with whether certain activities were mandated. He explained that the persons best able to respond to questions and present the DOF’s case were not available at this time, and therefore requested the Commission postpone the matter to the February hearing.

Jim Cunningham, claimant, did not agree with DOF’s request. He contended that the claimants and the Department of Education rebutted that letter and the staff considered and disregarded its comments. He added that the staff analysis has been available for comment since December, and no comments were filed by the DOF. Mr. Cunningham asked the Commission to consider and approve this item.

Member Gomes suggested continuing the item to allow the appropriate DOF staff to be present. Member Beltrami agreed. The Chair continued the item to the February hearing.

## B. PROPOSED STATEMENTS OF DECISION

Item 8            Dismissal of the *Withdrawn* Portions of the Special Education Test  
Claim filed by the Santa Barbara County Superintendent of Schools  
with the State Board of Control on October 31, 1980,  
SB-90-3453  
Statutes of 1977, Chapter 1247  
Statutes of 1980, Chapter 797  
(Title 2, CCR, Section 1183.08)<sup>1</sup>

Paula Higashi, Executive Director, introduced this item. She noted that the Commission staff

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<sup>1</sup> All that remains is the claim that Education Code section 56026 constitutes a reimbursable state mandated program by requiring school districts to provide special education services for students ages 3 to 5 and 18 to 21.



issued a letter to Santa Barbara and interested persons on October 27, 1999, providing notice to dismiss the 1980 claim and an opportunity for comment. On November 26, 1999, Santa Barbara filed an application to withdraw its test claim except for the portion requesting reimbursement for special education students ages 3-5 and 18-21. Santa Barbara amended the claim by substituting Long Beach Unified School District as the claimant. Commission staff issued a letter on December 8, 1999, notifying the parties of the Executive Director's intent to consolidate the claims, and that, within 60 days, any party could take over the withdrawn portions of the claim. No district asserted this right. Consequently, the Commission is required to issue a decision dismissing those portions. Staff recommended the Commission adopt the proposed statement of decision dismissing the Santa Barbara claim, with the subject exception. If the Commission wished to dismiss the entire claim, it may direct staff to notice a hearing to do so. Under common law principles, the action would require the claimant and interested parties to show cause why this test claim should not be dismissed.

Parties were represented as follows: Kyungah Suk and Dan Stone from the Attorney General's Office, representing the Department of Finance; Joseph Mullender for the Long Beach Unified School District; Marcia Faulkner for San Bernardino County; and, Carol Berg for the Education Mandated Cost Network.

Ms. Suk argued that the real issue was how to properly dismiss Santa Barbara's claim after the Commission had previously decided that the Santa Barbara claims were not part of the current Special Education proceedings. She submitted that, since the motion for reconsideration of that decision failed, the statement of decision finding that Santa Barbara's claim is not properly before the Commission stands. Ms. Suk did not oppose the withdrawal of Santa Barbara's claim, but sought the Commission to dismiss the 3-5 and 18-21 portion.

Mr. Mullender argued that dismissal of the 3-5 and 18-21 portion of the claim was not noticed on the agenda. Though he did not agree that the claim should be dismissed, he submitted that, if the Commission were to consider dismissing it, the action must be noticed for a subsequent hearing.

Member Beltrami asked about the impact of the November 30, 1998 statement of decision.

Ms. Higashi explained that the Commission determined that Education Code section 56026 was not part of the consolidated Riverside test claim because it was not part of Riverside or supplemental claimant filings. She noted that Long Beach had argued the section was part of the original Santa Barbara claim. The Commission did not take action on the Santa Barbara claim, or communicate with Santa Barbara, until it directed staff to notify Santa Barbara of the dismissal.

Mr. Mullender clarified that section 56026 was alleged in the Riverside claim and Grant Joint Union High School District supplemental claim for "over age 21."

Mr. Stone submitted that the Commission determined that the Santa Barbara claim did not survive all of the deadlines and filtering mechanisms imposed by the Commission. He argued that the only pending action should be to procedurally dismiss the claim.

Mr. Mullender disagreed, and stated that the only question involved in the September 1996 hearing was whether the Commission was precluded from hearing the claim because it had not been asserted by Riverside or a supplemental claimant.

Ms. Higashi agreed with Mr. Mullender that the statement of decision only mentions Santa Barbara in the historical background section, and not in the analysis.

Member Sherwood stated that the Long Beach claim for reconsideration is dead—the remaining question is whether the Santa Barbara claim is still alive outside of the consolidated Riverside claim. He clarified that staff contends that the claim is still alive because it was not addressed in the 1996 hearings. Ms. Higashi agreed that staff could not find any record of written communications with Santa Barbara.

In response to Member Sherwood, Ms. Higashi replied that staff had thoroughly researched the records under its control. Member Sherwood was concerned whether Santa Barbara was given the opportunity to be part of the Riverside claim—whether they were informed that the process was taking place. Member Sherwood recognized that there was no record indicating that was the case. He added that, if Santa Barbara had not been properly dismissed, then staff's analysis would be correct.

Mr. Stone clarified that Santa Barbara had not been dismissed and never formally withdrew their claim. Ms. Suk argued that Santa Barbara had not affirmatively participated in the claim because they did not respond to the Commission's order to prepare a comparative analysis or to file a test claim on or before July 1995 to be joined with the Riverside claim.

Member Sherwood understood that argument, but added that Santa Barbara's claim is not necessarily precluded if it was separate.

Ms. Faulkner and Dr. Berg refuted the DOF's argument that Santa Barbara intended to withdraw. Dr. Berg explained that Santa Barbara “moved to the back burner” when they determined they could not afford to put any more money into litigation.

Chairperson Porini asked if it were unusual for a claimant not to respond to any notices for this long. Dr. Berg responded that there have not been any notices until 1993. The Chair asked if the Commission knew Santa Barbara still intended to be involved. Dr. Berg replied that the Commission never asked the question. She explained that, for a reason unbeknownst to her, the claim was consolidated initially, but when it came out of court, it became the Riverside claim. Chairperson Porini asked if Santa Barbara raised an objection. Dr. Berg said they did not, because the Commission's regulations only allow one claim on an item, even though the two districts had overlapping but distinctly different allegations. Dr. Berg added that the Commission's regulations provide that a claim can only be withdrawn on request of the claimant. She noted that Santa Barbara never requested a withdrawal.

Chairperson Porini stated that it was her intent at the last hearing to notice this item for dismissal. Dr. Berg said it was her intent to get Santa Barbara active.

The Chair asked staff why, after Santa Barbara received the Commission's notice of intent to dismiss the claim, staff noticed the item only for withdrawal of certain portions. Ms. Higashi explained that the regulations permit parties to amend a claim before a hearing. Santa Barbara filed an amendment.

Member Sherwood asked what the Commission's options were today. Ms. Higashi replied that the Commission could adopt a statement of decision to dismiss the portions withdrawn by Santa Barbara, or, under common law principles, it could notice the entire item for dismissal at a subsequent hearing since the Commission's regulations do not cover dismissals. Member Sherwood asked if Ms. Higashi thought what was before the Commission today was correct. She did, given the current regulations adopted last June.

In response to Ms. Suk's allegation that Santa Barbara did not provide a comparative analysis, Ms. Higashi explained that the Commission's 1995 decision applied to the Riverside claim initiated by the filing of briefs by Riverside. Dr. Berg added that Long Beach's participation as a representative on that topic was also at issue.

Member Gomes suggested noticing a hearing to dismiss the entire claim. Member Beltrami suggested dismissing the withdrawn portions today and acting on the remaining issue later. Member Gomes asked if the Commission doing so would acknowledge the 3-5 and 18-21 section and therefore preclude the Commission from entertaining it for dismissal later.

Ms. Jorgensen replied that, if the Commission dismisses the withdrawn portions, according to due process, someone could come forward and say why they should not be dismissed. For the 3-5 and 18-21 portion, the Commission could then give a 60-day notice of hearing to dismiss under common law principles. Member Beltrami clarified that the Commission could also give notice that the entire claim would be dismissed.

Member Sherwood moved to dismiss the withdrawn portions today and to notice the other portion for hearing. There was no second.

Dr. Berg submitted that the Commission's regulations allow a claimant to request withdrawal, but do not allow the Commission to dismiss. She did not agree with the common law procedure for dismissing a stale claim.

Mr. Stone had no objection to dismissing the withdrawn portions, but requested the Commission overrule the substitution and consolidation orders by the executive director and set the remaining portion for hearing on dismissal.

Discussion ensued regarding the claimant withdrawing the claim under Commission regulations versus the Commission dismissing the claim as stale under common law.

The Chair asked if the Commission takes action to dismiss the withdrawn portions, if it is appropriate for the Commission to notice dismissal of the section the Long Beach is attempting to take over. Ms. Jorgensen said it was. Member Beltrami added that the Commission set the claim for dismissal and then decide whether the claim was stale after testimony at the next hearing.

Member Gomes remained concerned that, if the Commission took action today, they would be unable to dismiss the 3-5 and 18-21 portion later. Ms. Jorgensen did not think that would be the consequence. Member Suter submitted that the safest action would be to renounce the entire claim. Member Gomes agreed. The Chair instructed staff to renounce the entire claim for a future agenda. Mr. Stone questioned if a motion was necessary. Member Gomes moved to renounce the entire claim. With a second by Member Beltrami, and an abstention by Member Suter, the motion passed unanimously.

Member Beltrami inquired whether the Commission was modifying the rules in this regard. Ms. Higashi replied that the particular amendment applied in this situation was a modification proposed during the sunset review process. Ms. Jorgensen added that the dismissal of claims was on the rulemaking calendar in November, so it is in process. Upon request by the Chair, Ms. Higashi agreed to provide the members with a list of inactive claims.

## C. APPEAL OF EXECUTIVE DIRECTOR'S ACTION

### Item 9 *Special Education for Ages 3 to 5 and 18 to 21*

CSM 3986A, SB 90 – 3453  
Long Beach Unified School District, Claimant

Department of Finance's Appeal of the Executive Director's Action to Consolidate a Portion of the Special Education Test Claim Originally Filed by Santa Barbara County Superintendent of Schools on October 31, 1980 (SB 90 – 3453) with the Special Education Test Claim Filed by Long Beach Unified School District on September 26, 1996 (CSM – 3986A), Education Code Section 56026 Statutes of 1977, Chapter 1247; Statutes of 1980, Chapter 797 (Title 2, CCR, Sections 1181 and 1183.06)

The Chair noted that the action on Item 8 precluded action on Item 9.

## **EXECUTIVE DIRECTOR'S REPORT**

Item 13      Workload, Governor's Budget, Local Claims Bill, Legislation, etc.

Paula Higashi reported the following:

- Workload. No major changes.
- Budget. The Governor's Budget includes four new positions for the Commission.
- Claims Bill. Senator Peace was requested to carry the local government claims bill.
- Introduction. Sean Avalos joined the Commission staff as a limited term graduate legal assistant (GLA). He is a recent graduate of UC Davis and bar admittee.
- Baby. The Commission's staff counsel, Camille Shelton, gave birth to a baby boy on Saturday, January 22.
- United California State Employees Campaign. Thanks to staff for 100 percent participation and to Nancy Patton for heading the campaign.
- Move. The final lease documents are pending signature and the tentative move date is May 1.

Member Beltrami questioned the ratio of attorneys to analysts on the Commission staff. Ms. Higashi replied that staff includes one chief counsel and two staff counsels. The GLA is assisting staff during Ms. Shelton's maternity leave.

## **NEXT AGENDA**

Ms. Higashi reported that many of the items postponed or continued from today's hearing would be on the February agenda. In addition, a parameters and guidelines amendment and request for removal from the state mandates apportionment system will be scheduled. The Special Education matters will be heard no earlier than March.

## **PUBLIC COMMENT**

Mr. Burdick noted that he would submit his comments in writing.

Ms. Higashi announced the retirement of Jim Apps, with the Department of Finance. Chairperson Porini presented Mr. Apps with a resolution. The Commission and staff then recognized Mr. Apps' 36 years of public service, and namely his many years of participation in the mandates process. Mr. Burdick presented him with a plaque on behalf of the School Services of California.

## **ADJOURNMENT**

Chairperson Porini adjourned the meeting at 12:34 p.m.

PAULA HIGASHI  
Executive Director

[Back to Hearing Calendars](#)